RECENT CASES

HOMICIDE—TRIAL—INSTRUCTIONS—EVERSOLE V. COMMONWEALTH, 163 S. W., 496.—In the prosecution of a wife for the killing of her husband, it was *held*, that it was error to refuse an instruction that if the husband ordered her to leave the house, and threatened to kill her if she didn't, and on her refusal assaulted her—the wife had a right to use all necessary force to resist, even to the point of killing the husband.

To justify a killing on the ground of self-defense the defendant must have had ground to believe himself in great peril, that the killing was necessary for escape, and there were no other safe means of retreat. *People v. Mallon,* 116 N. Y. App., 425. But in some of the southern states the doctrine prevails that a man need not retreat if he is where he has a right to be, even though the retreat could be safely made. *Brinkley v. State,* 89 Ala., 34. But to the general rule as to the necessity of retreat there is an universal exception that one attacked in his own house, and who is in the right, need not retreat but may resist even to the point of killing his assailant. *State v. Bissonnette,* 83 Ct., 261; *Andrews v. State,* 159 Ala., 115; *Jones v. State,* 76 Ala., 8. But the defendant must himself have been without fault. *State v. Touri* 101 Minn., 370. The theory is that when a man is in his own house he is deemed to have retreated to the wall and need not retreat further. *Palmer v. State,* 9 Wyo., 40. A man being in his own house need not fly as far as he can, as in other cases of *se defendendo,* for he hath the protection of his house to excuse him from flying. 1 Hale, P. C., 486. In the case of the husband and wife, the husband's home is the wife's home and she needn't retreat therefrom to avoid a difficulty even with her husband. *Hutchison v. State,* 165 Ala., 16. A person in his own house has the same right to stand his ground and kill in self defense when assaulted by a partner or co-tenant. *Jones v. State,* 76 Ala., 8. The principal case is in accord with the great weight of authority in making, under these circumstances, an exception to the rule that there is a duty to retreat.

INFANTS—CONTRACT TO PURCHASE LAND—RESCISSION.—HEALY V. KELLOG, 145 N. Y. S., 943.—An infant entered into a contract to purchase land on installments. After reaching his majority the infant, not wishing to perform, offered to return the contract, and demanded back the money already paid. The defendant refused to release the infant and threatened to send her to jail if she failed to perform. The infant thereupon made several payments when, learning of her rights, refused to carry out the contract. *Held,* notice of her disaffirmance together with her offer to return the contract amounted to a disaffirmance, though in ignorance of her rights, and under duress, she made several payments after reaching her majority, believing she was still bound by her contract.

In contracts relating to realty, the earlier cases held that the act of rescission on the part of an infant must be one of the same solemnity and

dignity as the original act. A deed of bargain and sale of waste or uncultivated land by an infant was avoided by a subsequent deed of bargain and sale of the same land to a third party after majority. *Jackson v. Carpenter,* 11 Johns., 541; *Jackson v. Burchin,* 14 Johns., 124. But if the land was in a state of cultivation and the infant was out of possession, the infant must enter in addition to executing a deed. *Roberts v. Wiggins,* 1 N. H., 73; *Harris v. Cannon,* 6 Ga., 382. The foregoing views do not generally prevail in modern law. "The disaffirming act need take no particular form or expression, but it must show an unequivocal intent to repudiate." *Singer Mfg. Co. v. Lamb,* 81 Mo., 225; *Heath v. West,* 26 N. H., 199. Contracts relating to persons or personalty may be disaffirmed by any act which shows an intention not to be bound by them. *Skinner v. Maxwell,* 66 N. C., 47. There has been no generally accepted principle laid down by the courts governing the rescission of contracts by infants. The tendency has been, and it now appears to be the prevailing rule, to look at the intent of the infant and to give effect to it. This decision is clearly sound and is in harmony with the general tendency of the courts.

MASTER AND SERVANT—VOLUNTARY ASSOCIATION—LIABILITY.—WAHLHEIMER *v.* HARDENBERGH, APP. DIV., N. Y., JAN., 1914. CLARK AND SCOTT, JJ., *dissenting.*—Several newspapers formed a voluntary news association to collect and distribute news. The association was duly organized with the customary officers and an executive committee. Defendant was employed as general manager with authority to employ help to carry out the purposes of the association under the direction of the executive committee. One of the defendant's subordinates in the course of his employment wrote and published matter libelous *per se* of the plaintiff. Defendant knew nothing of the affair till two years later, when suit was brought to recover damages for the libel. *Held,* defendant was liable on the theory of *respondeat superior.*

At common law voluntary associations were regarded as partnerships in the transaction of business. *Williams v. Bank of Michigan,* 7 Wend., 542; *Ferris v. Thaw,* 5 Mo. App., 279. No action could be maintained against an unincorporated association as such; *Karges Furniture Co. v. Local Union No.* 131 *et al.,* 165 Ind., 414; but could against the members composing the association; *Bullock v. Dunning,* 54 Ind., 115; and each member who participates in tortious acts of the association will be liable. *Comm. v. Hunt,* 4 Met. 111; *Carew v. Rutherford,* 106 Mass., 1. A master is liable for injuries to third persons caused by the act of his servant acting within the scope of his employment. *Toledo, W. & W. R. Co. v. Harmon,* 47 Ill., 298; *Gray v. Portland Bank,* 3 Mass., 363. A servant who is sued by such third party may have an action over against his master. *Gower v. Emery,* 18 Me., 79, *Lowell v. Boston & Lowell R. R.,* 23 Pickering, 24; *Willard v. Newbury,* 22 Vt. 458. The majority opinion proceeds on the theory that the defendant is the master and his subordinates his servants. The dissenting opinion takes the position that the association is the responsible head, and the subordinates as well as the defendant are